

117TH CONGRESS  
1ST SESSION

# S. 3166

To amend title XIX of the Social Security Act to improve coverage of dental and oral health services for adults under Medicaid, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2021

Mr. CARDIN (for himself and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to improve coverage of dental and oral health services for adults under Medicaid, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medicaid Dental Ben-  
5       efit Act of 2021”.

6       **SEC. 2. REQUIRING MEDICAID COVERAGE OF DENTAL AND**

7                   **ORAL HEALTH SERVICES FOR ADULTS.**

8       (a) IN GENERAL.—

9                   (1) MANDATORY COVERAGE.—

## 1                             (A) IN GENERAL.—

2                             (i)                         REQUIREMENT.—Section  
3                             1902(a)(10)(A) of the Social Security Act  
4                             (42 U.S.C. 1396a(a)(10)(A)) is amended  
5                             by inserting “(10),” after “(5),”.

## 6                             (ii) MEDICALLY NEEDY.—

7                             (I)                         IN GENERAL.—Section  
8                             1902(a)(10)(C)(iv) of such Act (42  
9                             U.S.C. 1396a(a)(10)(C)(iv)) is  
10                            amended by striking “and (17)” and  
11                            inserting “, (10), and (17)” after  
12                            “(5)”.

13                             (II) RULE OF CONSTRUCTION.—  
14                            Nothing in this section or the amend-  
15                            ments made by this section shall be  
16                            construed to limit the access of an in-  
17                            dividual residing in an institutional  
18                            setting to dental and oral health serv-  
19                            ices (as such term is defined in sec-  
20                            tion 1905(jj) of the Social Security  
21                            Act, as added by paragraph (2)(B)).

22                             (iii) EFFECTIVE DATE.—The amend-  
23                            ments made by clauses (i) and (ii) shall  
24                            apply with respect to expenditures for med-

1                   ical assistance in calendar quarters begin-  
2                   ning on or after January 1, 2023.

3                   (B) BENCHMARK COVERAGE.—Section  
4                   1937(b)(5) of the Social Security Act (42  
5                   U.S.C. 1396u-7(b)(5)) is amended by striking  
6                   the period and inserting “, and, beginning Jan-  
7                   uary 1, 2023, coverage of dental and oral  
8                   health services (as such term is defined in sec-  
9                   tion 1905(jj)).”.

10                  (C) OPTIONAL APPLICATION TO TERRI-  
11                  TORIES.—Section 1902(j) of the Social Security  
12                  Act (42 U.S.C. 1396a(j)) is amended—

13                   (i) by striking “this title, the Sec-  
14                   retary” and inserting “this title—

15                   “(1) in the case of a State other than the 50  
16                   States and the District of Columbia the requirement  
17                   under subsection (a)(10)(A) to provide the care and  
18                   services listed in paragraph (10) of section 1905(a)  
19                   shall be optional; and

20                   “(2) the Secretary”; and

21                   (ii) by striking the second comma  
22                   after “section 1108(f)”.

23                  (2) DEFINITION OF DENTAL AND ORAL HEALTH  
24                  SERVICES.—Section 1905 of the Social Security Act  
25                  (42 U.S.C. 1396d) is amended—

“(jj) DENTAL AND ORAL HEALTH SERVICES.—For purposes of subsection (a)(10), the term ‘dental and oral health services’ means dentures and denture services, implants and implant services, and services necessary to prevent oral disease and promote oral health, restore oral structures to health and function, reduce oral pain, and treat emergency oral conditions, that are furnished by a provider who is legally authorized to furnish such items and services under State law (or the State regulatory mechanism provided by State law).”.

16 (3) CONFORMING AMENDMENT.—

24 (b) STATE OPTION FOR ADDITIONAL DENTAL AND  
25 ORAL HEALTH BENEFITS.—Section 1905(a)(13) of the

1 Social Security Act (42 U.S.C. 1396d(a)(13)) is amended  
2 by inserting the following new subparagraph after sub-  
3 paragraph (C):

4                 “(D) at State option, such items and serv-  
5                 ices related to dental and oral health services  
6                 (as defined in subsection (jj)) that are in addi-  
7                 tion to those identified in such subsection (jj)  
8                 as the State may specify;”.

9 (c) INCREASED FMAP.—

10                 (1) MEDICAID.—Section 1905 of the Social Se-  
11                 curity Act (42 U.S.C. 1396d), as amended by sub-  
12                 section (a), is further amended—

13                     (A) in subsection (b), by striking “and  
14                     (ii)” and inserting “(ii), and (kk)”;

15                     (B) in subsection (ff), by striking “and  
16                     (ii)” and inserting “, (ii), and (kk)”;

17                     (C) by adding at the end the following new  
18                 subsection:

19                 “(kk) INCREASED FMAP FOR EXPENDITURES RE-  
20 LATED TO DENTAL AND ORAL HEALTH SERVICES.—

21                 “(1) IN GENERAL.—

22                     “(A) 50 STATES AND DC.—Notwith-  
23                 standing subsection (b), in the case of a State  
24                 that is 1 of the 50 States or the District of Co-  
25                 lumbia, during the 12-quarter period that be-

1       gins on January 1, 2023, the Federal medical  
2       assistance percentage shall be equal to 100 per-  
3       cent with respect to amounts expended by the  
4       State for medical assistance for dental and oral  
5       health services authorized under paragraph (10)  
6       of subsection (a). In no case may the applica-  
7       tion of this subparagraph result in the Federal  
8       medical assistance percentage determined for a  
9       State with respect to expenditures described in  
10      this subparagraph exceeding 100 percent.

11      “(B) TERRITORIES.—

12           “(i) IN GENERAL.—Notwithstanding  
13        subsection (b), in the case of a State that  
14        is Puerto Rico, the Virgin Islands, Guam,  
15        the Northern Mariana Islands, or Amer-  
16        ican Samoa, during a period described in  
17        clause (ii), the Federal medical assistance  
18        percentage shall be equal to 100 percent  
19        with respect to amounts expended by the  
20        State for medical assistance for any item  
21        or service that is included in dental and  
22        oral health services authorized under para-  
23        graph (10) of subsection (a). In no case  
24        may the application of this clause result in  
25        the Federal medical assistance percentage

1           determined for a State with respect to ex-  
2           penditures described in this clause exceed-  
3           ing 100 percent.

4           “(ii) PERIOD DESCRIBED.—A period  
5           described in this clause is, with respect to  
6           an item or service described in clause (i)  
7           and a State described in such clause, the  
8           12-quarter period that begins with the first  
9           quarter beginning on or after January 1,  
10           2023, in which such item or service is first  
11           covered under the State plan or under a  
12           waiver of such plan.

13           “(2) EXCLUSIONS.—The Federal medical as-  
14           sistance percentage specified in paragraph (1) shall  
15           not apply to amounts expended for medical assist-  
16           ance during any period for—

17           “(A) additional items and services author-  
18           ized under paragraph (13)(D) of subsection (a);  
19           or

20           “(B) items and services furnished to an in-  
21           dividual if, as of the date of enactment of this  
22           subsection, medical assistance was available to  
23           such individual for such items and services or  
24           medicare cost-sharing under the State plan or  
25           a waiver of such plan.”.

1                             (2) EXCLUSION OF AMOUNTS ATTRIBUTABLE  
2                             TO INCREASED FMAP FROM TERRITORIAL CAPS.—  
3                             Section 1108 of the Social Security Act (42 U.S.C.  
4                             1308) is amended—

5                             (A) in subsection (f), in the matter pre-  
6                             ceding paragraph (1), by striking “subsections  
7                             (g) and (h)” and inserting “subsections (g),  
8                             (h), and (i)”;  
9                             and

9                             (B) by adding at the end the following:

10                         “(i) EXCLUSION FROM CAPS OF AMOUNTS ATTRIB-  
11                         UTABLE TO INCREASED FMAP FOR COVERAGE OF DEN-  
12                         TAL AND ORAL HEALTH SERVICES.—Any additional  
13                         amount paid to Puerto Rico, the Virgin Islands, Guam,  
14                         the Northern Mariana Islands, and American Samoa for  
15                         expenditures for medical assistance that is attributable to  
16                         an increase in the Federal medical assistance percentage  
17                         applicable to such expenditures under section 1905(kk)  
18                         shall not be taken into account for purposes of applying  
19                         payment limits under subsections (f) and (g).”.

20                         **SEC. 3. ADULT ORAL HEALTH QUALITY AND EQUITY MEAS-  
21                         URES.**

22                         (a) IN GENERAL.—Title XI of the Social Security Act  
23                         (42 U.S.C. 1301 et seq.) is amended by inserting after  
24                         section 1139B the following new section:

1   **“SEC. 1139C. ADULT ORAL HEALTH QUALITY AND EQUITY**

2                   **MEASURES.**

3        “(a) DEVELOPMENT OF CORE SET OF ADULT ORAL  
4    HEALTH CARE QUALITY AND EQUITY MEASURES.—

5               “(1) IN GENERAL.—The Secretary shall iden-  
6       tify and publish a recommended core set of health  
7       quality and equity measures for individuals enrolled  
8       in a State plan (or waiver of such plan) under title  
9       XIX who are over the age of 21 in the same manner  
10      as the Secretary identifies and publishes a core set  
11      of child health quality measures under section  
12      1139A, including with respect to identifying and  
13      publishing existing oral health quality measures for  
14      such individuals that are in use under public and  
15      privately sponsored health care coverage arrange-  
16      ments, or that are part of reporting systems that  
17      measure both the presence and duration of health  
18      insurance coverage over time, that may be applicable  
19      to enrolled adults.

20       “(2) ALIGNMENT WITH EXISTING CORE SET.—  
21      In identifying and publishing the recommended core  
22      set of adult oral health quality and equity measures  
23      required under paragraph (1), the Secretary shall  
24      ensure that, to the extent possible, such measures  
25      align with and do not duplicate the core set of adult

1       health quality and equity measures identified, pub-  
2       lished, and revised under section 1139B.

3           “(3) PROCESS FOR ADULT ORAL HEALTH QUAL-  
4       ITY AND EQUITY MEASURES PROGRAM.—In identi-  
5       fying gaps in existing adult oral health quality and  
6       equity measures and establishing priorities for the  
7       development and advancement of such measures, the  
8       Secretary shall consult with—

9               “(A) States;  
10          “(B) health care providers;  
11          “(C) patient representatives;  
12          “(D) dental professionals; and  
13          “(E) national organizations with expertise  
14       in oral health quality or equity measurement.

15       “(b) DEADLINES.—

16           “(1) RECOMMENDED MEASURES.—Not later  
17       than 1 year after enactment of this Act, the Sec-  
18       retary shall identify and publish for comment a rec-  
19       ommended core set of adult oral health quality and  
20       equity measures that includes the following:

21               “(A) Measures of utilization of oral health  
22       and dental services across health care settings.

23               “(B) Measures that address the availability  
24       of oral evaluations during or following medical  
25       visits for enrolled adults.

1               “(C) Measures that address the incidence  
2               of emergency department visits for non-trau-  
3               matic dental conditions.

4               “(D) Measures that address the avail-  
5               ability and receipt of follow-up dental care after  
6               emergency department visits for non-traumatic  
7               dental conditions during pregnancy.

8               “(E) Measures that address the availability  
9               of counseling of enrolled adults aimed at im-  
10              proving oral health outcomes.

11              “(F) Measures that address the availability  
12              and receipt of care for beneficiaries who meet  
13              the medical necessity criteria for general anes-  
14              thesia and intravenous sedation.

15              “(G) Measures that address screening and  
16              evaluation for caries risk and periodontitis and  
17              treatment for caries risk and periodontitis, in-  
18              cluding the following:

19                  “(i) The percentage of enrolled adults  
20                  who have caries risk documented in the re-  
21                  porting year involved.

22                  “(ii) The percentage of enrolled adults  
23                  who received a topical fluoride application  
24                  or sealants based on an oral health risk as-  
25                  essment demonstrating the need for such

1 application or sealants during the report-  
2 ing year involved.

3 “(iii) The percentage of enrolled  
4 adults who received a comprehensive or  
5 periodic oral evaluation or a comprehensive  
6 periodontal evaluation during the reporting  
7 year involved.

8 “(iv) The percentage of enrolled  
9 adults with a history of periodontitis who  
10 received an oral prophylaxis, scaling or  
11 root planing, or periodontal maintenance  
12 visit at least 2 times during the reporting  
13 year involved.

14 “(v) The percentage of enrolled adults  
15 with diabetes who receive a comprehensive  
16 or periodic evaluation or a comprehensive  
17 periodontal evaluation during the reporting  
18 year involved.

19 “(vi) The percentage of enrolled  
20 adults who require tooth extraction during  
21 the reporting year involved.

22 “(vii) The percentage of enrolled  
23 adults who require partial or full dentures  
24 during the reporting year involved.

1           “(2) DISSEMINATION.—Not later than 1 year  
2 after enactment of this Act, the Secretary shall pub-  
3 lish an initial core set of oral health quality and eq-  
4 uity measures that are applicable to enrolled adults.

5           “(3) STANDARDIZED REPORTING.—Not later  
6 than 2 years after the date of the enactment of this  
7 Act, the Secretary, in consultation with States, shall  
8 develop a standardized format for the collection and  
9 reporting of information based on the initial core set  
10 of adult oral health quality and equity measures  
11 (stratified by race, ethnicity, primary language, dis-  
12 ability status, sexual orientation and gender iden-  
13 tity) and create guidelines, procedures, and incen-  
14 tives to States to use such measures and to collect  
15 and report information regarding the quality and eq-  
16 uity of oral health care for enrolled adults.

17           “(4) REPORTS TO CONGRESS.—Not later than  
18 3 years after enactment of this act, and every 3  
19 years thereafter, the Secretary shall include in the  
20 report to Congress required under section  
21 1139A(a)(6) information similar to the information  
22 required under that section with respect to the  
23 measures established under this section.

1       “(c) ANNUAL STATE REPORTS REGARDING STATE-  
2 SPECIFIC ORAL HEALTH QUALITY AND EQUITY MEAS-  
3 URES APPLIED UNDER MEDICAID.—

4           “(1) IN GENERAL.—Each State with a plan ap-  
5 proved under title XIX (or with a waiver of such  
6 plan in effect) shall annually report (separately or as  
7 part of the annual report required under section  
8 1139A(c)) to the Secretary on—

9              “(A) the State-specific adult oral health  
10 quality and equity measures applied by the  
11 State under such a plan or waiver, including  
12 measures described in subsection (b)(1);

13              “(B) the State-specific information on the  
14 quality and equity of oral health care furnished  
15 to enrolled adults under such a plan or waiver,  
16 including information collected through external  
17 quality reviews of managed care organizations  
18 under section 1932 and benchmark plans under  
19 section 1937, disaggregated by race, ethnicity,  
20 primary language, disability status, sexual ori-  
21 entation, and gender identity;

22              “(C) the State-specific information regard-  
23 ing the dental benefits available to enrolled  
24 adults under such a plan or waiver, including  
25 any limits on such benefits and the amount of

1           reimbursement provided under such plan or  
2           waiver for such benefits; and

3                 “(D) the State-specific plan to identify,  
4                 evaluate, and reduce in meaningful and measur-  
5                 able ways, to the extent practicable, health dis-  
6                 parities based on age, sex, race, ethnicity, pri-  
7                 mary language, sexual orientation and gender  
8                 identity, and disability status.

9                 “(2) PUBLICATION.—Not later than 2 years  
10                 after the date of enactment of this Act, and annually  
11                 thereafter, the Secretary shall collect, analyze, and  
12                 make publicly available the information reported by  
13                 States under paragraph (1).

14                 “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
15                 are authorized to be appropriated \$10,000,000 to carry  
16                 out this section. Funds appropriated under this subsection  
17                 shall remain available until expended.”.

18                 (b) REQUIRED REPORTING.—

19                     (1) MEDICAID.—Section 1902(a) of the Social  
20                     Security Act (42 U.S.C. 1396a(a)) is amended—

21                         (A) in paragraph (86), by striking “and”  
22                         at the end;

23                         (B) in paragraph (87)(D), by striking the  
24                         period and inserting “; and”; and

(C) by inserting after paragraph (87) the following new paragraph:

3               “(88) provide for the reporting required under  
4               section 1139C(c).”.

8       “(d) REPORTING REQUIREMENTS.—A State child  
9 health plan shall provide for the reporting required under  
10 section 1139C(c).”.

#### **11 SEC. 4. ADULT ORAL HEALTH CARE REPORT.**

Not later than 2 years after the date of enactment of this Act, the Medicaid and CHIP Payment and Access Commission shall submit to Congress a report on issues related to adult oral health across the 50 States, tribes, and the territories, including—

17                   (1) the availability of adult oral health cov-  
18 erage, and enrollment in such coverage;

19 (2) a survey of adult oral health status among  
20 low-income women of childbearing age;

(3) barriers to accessing adult oral health care, including for racially diverse, ethnically diverse, and limited English proficient communities;

24 (4) innovations and potential solutions to prob-  
25 lems of access (including disparities in access) to

1       adult oral health care, including innovations that  
2       would expand access to such care beyond dental of-  
3       fices; and

4                 (5) the impact of the amendments made by sec-  
5       tion 2 and recommendations for improving reim-  
6       bursement rates for such provider of dental and oral  
7       health services under the Medicaid program.

8 **SEC. 5. ORAL HEALTH OUTREACH AND EDUCATION.**

9       Not later than 1 year after the date of enactment  
10 of this Act, the Secretary shall develop a program, to be  
11 implemented through contracts with entities that fund or  
12 provide oral health care, to provide—

13                 (1) culturally competent and linguistically ap-  
14       propriate information on the availability and scope  
15       of oral health and dental coverage for adults who are  
16       eligible for or enrolled under a State plan (or waiver  
17       of such plan) under title XIX of the Social Security  
18       Act (42 U.S.C. 1396 et seq.);

19                 (2) assistance in connecting adults and under-  
20       served populations enrolled in such a plan (or waiv-  
21       er) to oral health care;

22                 (3) education to dental, oral health, and med-  
23       ical professionals to strengthen core competencies in  
24       delivering culturally competent oral health care to  
25       adults enrolled in such a plan (or waiver), including:

1 individuals with physical and intellectual disabilities,  
2 pregnant and postpartum individuals, Alaskan-Na-  
3 tive and American-Indian populations, and people  
4 living in urban, rural and, other underserved com-  
5 munities; and

6 (4) culturally competent and linguistically ap-  
7 propriate interactive oral health education aimed at  
8 promoting good oral health practices for adults, in-  
9 cluding racially and ethnically diverse Medicaid  
10 beneficiaries.

○